

## § 107.219

## 49 CFR Ch. I (10–1–01 Edition)

(a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application filed with the Associate Administrator a description of the persons or class or classes of persons to whom notice was not sent.

(c) The Associate Administrator may require the applicant to provide notice in addition to that required by paragraphs (a) and (b) of this section, or may determine that the notice required by paragraph (a) of the section is not impracticable, or that notice should be published in the FEDERAL REGISTER. Late-filed comments are considered so far as practicable.

(d) The Associate Administrator may notify any other persons who may be affected by the outcome of a determination on the application.

(e) Any person submitting written comments to the Associate Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant. The person shall certify to the Associate Administrator that he has complied with the requirements of this paragraph. The Associate Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

[Amdt. 107–3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107–24, 56 FR 8621, Feb. 28, 1991; Amdt. 107–25, 57 FR 20429, May 13, 1992; Amdt. 107–38, 61 FR 21099, May 9, 1996]

### § 107.219 Processing.

(a) The Associate Administrator may initiate an investigation of any statement in an application and utilize in his or her evaluation any relevant facts obtained by that investigation. The Associate Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions. In evaluating an application, the Associate Administrator on his or her own initiative may convene a hearing or conference, if he or she considers

that a hearing or conference will advance his or her evaluation of the application.

(b) The Associate Administrator may dismiss the application without prejudice if:

(1) He or she determines that there is insufficient information upon which to base a determination;

(2) Upon his or her request, additional information is not submitted by the applicant; or

(3) The applicant fails to provide the notice required by § 107.217.

(c) Except as provided in § 107.201(c), the Associate Administrator will only consider an application for a waiver of preemption determination if:

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision thereof or Indian tribe requirement for which the determination is sought is inconsistent with the requirements of the Federal hazardous material transportation law or the regulations issued thereunder; or

(2) The State or political subdivision thereof or Indian tribe requirement has been determined by a court of competent jurisdiction or in a ruling issued under § 107.209 to be inconsistent with the requirements of the Federal hazardous material transportation law or the regulations issued thereunder.

(d) When the Associate Administrator has received all substantive information it considers necessary to process an application for a waiver of preemption determination, it serves notice of that fact upon the applicant and all other persons who received notice of the proceeding pursuant to § 107.217.

(e) To the extent possible, each application for a waiver of preemption determination will be acted upon in a manner consistent with the disposition of previous applications for waiver of preemption determinations.

[Amdt. 107–3, 41 FR 38171, Sept. 9, 1976, as amended by Amdt. 107–24, 56 FR 8621, 8623, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–38, 61 FR 21099, May 9, 1996; 65 FR 58618, Sept. 29, 2000]